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Administration of justice at the United Nations

Report of the Redesign Panel on the United Nations system of administration of justice

Summary

The Redesign Panel on the United Nations system of administration of justice was established by the Secretary-General in January 2006 pursuant to resolution 59/283, in which the General Assembly requested him to establish a panel of external, independent experts to review and possibly redesign the system of administration of justice at the United Nations. The present report, containing the findings and recommendations of the Redesign Panel, is submitted in fulfilment of the terms of reference stipulated for it by the Assembly.

The Redesign Panel found that the United Nations internal justice system is outmoded, dysfunctional and ineffective and that it lacks independence. The financial, reputational and other costs to the Organization of the present system are enormous, and a new, redesigned system of internal justice will be far more effective than an attempt to improve the current system.

Effective reform of the United Nations cannot happen without an efficient, independent and well-resourced internal justice system that will safeguard the rights of staff members and ensure the effective accountability of managers and staff members.

The Redesign Panel recommends a decentralized, streamlined and ultimately cost-efficient system of internal justice for the United Nations. This new system will be professional and independent and, if well-resourced, will both reduce conflicts within the Organization through more effective informal dispute resolution and ensure the expeditious disposal of cases in the formal justice system. The objective of decentralization is to ensure that staff members serving in field operations, who constitute the majority of staff, are effectively covered by the internal justice system.

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The Office of the Ombudsman should be strengthened and decentralized with a merger of the existing Offices of Ombudsmen in the Secretariat and funds and programmes. The Office should have professional mediators and should take on a stronger monitoring role regarding institutional management. The Joint Appeals Boards and the Joint Disciplinary Committees should be replaced with a new, decentralized United Nations Dispute Tribunal presided over by independent, professional judges with power to issue binding decisions. The United Nations Administrative Tribunal should become a mainly appellate court for the internal justice system. Legal representation for staff members should be professionalized and decentralized.

The Redesign Panel recommends the establishment of the proposed new justice system by a resolution of the General Assembly, further recommends the establishment of an Office of the Administration of Justice in the United Nations to manage this important aspect of the work of the Organization and to ensure the independence of the proposed new internal justice system and, finally, proposes that the new system, if approved by the General Assembly, become operational on 1 January 2008.

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		Paragraphs	Page
I.	Introduction	1–4	4
II.	Overview	5–14	4
III.	A unified system	15–36	6
IV.	The informal system	37–61	10
V.	The formal system	62–99	15
VI.	Legal representation	100–114	22
VII.	Education and training	115–119	24
VIII.	Accountability	120–121	25
IX.	Independence and transparency	122–131	25
X.	Cost-effectiveness	132–139	27
XI.	Consequential and transitional measures	140–148	28
XII.	Conclusions	149–151	30
XIII.	Recommendations	152–177	30

es

I.	Jurisdiction of United Nations Dispute Tribunal	33
II.	Amendments to the Statute of the United Nations Administrative Tribunal to cover its new appellate jurisdiction	34
III.	Recommended posts: formal justice system	36
IV.	Recommended posts: Office of the Ombudsman	37
V.	Recommended posts: Office of Counsel	39
VI.	Proposed system of United Nations internal justice	40

I. Introduction

1. In its resolution 59/283, the General Assembly decided that the Secretary-General should establish a panel of external and independent experts to consider redesigning the system of administration of justice at the United Nations. In its resolution the General Assembly gave the Redesign Panel wide terms of reference. These terms of reference include consideration of alternative systems of organizational dispute resolution while bearing in mind the uniqueness of the United Nations system, consideration of peer review, identification of measures such as education and training to minimize the number of disputes and a review of the functioning of the United Nations Administrative Tribunal (UNAT) and its relationship with the International Labour Organization Administrative Tribunal (ILOAT). The terms of reference also include the examination of the possibility of an integrated two-layer judicial system and the legal representation of the Secretary-General.

2. The Redesign Panel began its work on 1 February 2006 and hereby submits its findings and recommendations.

3. The Redesign Panel considered the relevant resolutions of the General Assembly. It consulted with and received and reviewed information from a wide range of stakeholders in and outside the administration of justice system: United Nations staff, staff unions, managers and relevant officials not only in the Secretariat but also in the funds and programmes, at Headquarters and in the field, the President of UNAT, members of the Administrative Tribunal of the World Bank, Member States, the International Bar Association for International Governmental Organizations, the Government Accountability Project, officials of other judicial systems and external, independent experts.

4. The Redesign Panel visited the United Nations Offices at Geneva, Vienna and Nairobi, the International Criminal Tribunal for Rwanda, the Economic Commission for Latin America and the Caribbean and the United Nations Stabilization Mission in Haiti. Furthermore, the Panel consulted several duty stations, including the International Tribunal for the Former Yugoslavia and the United Nations Mission in Liberia, by videoconference.

II. Overview

5. The Redesign Panel found that the administration of justice in the United Nations is neither professional nor independent. The system of administration of justice as it currently stands is extremely slow, underresourced, inefficient and, thus, ultimately ineffective. It fails to meet many basic standards of due process established in international human rights instruments. For all these reasons, staff of the Organization have little or no confidence in the system as it currently exists.

6. An overwhelming majority of stakeholders consulted by the Redesign Panel believe that the present system, established early in the life of the Organization over half a century ago and based largely on a peer review mechanism in which participation is voluntary, has outlived its relevance. The time has come to overhaul the system rather than seek to make marginal improvements. Staff members, including staff unions and managers, voiced strong support for a professional, independent and adequately resourced system of internal justice that guarantees the

rule of law within the United Nations. The Redesign Panel stresses that the effective rule of law in the United Nations means not only the protection of the rights of staff members and management, but accountability of managers and staff members alike.

7. This outcome is of fundamental importance. First, as a result of the jurisdictional immunities enjoyed by the Organization, staff members have no external recourse to the legal systems of Member States, while the Secretary-General may waive their functional immunity from action under national legal systems in certain cases. Thus, it is essential to have an internal justice system that both provides adequate safeguards and ensures accountability of staff members. The Redesign Panel finds that the system that exists at present is fundamentally inadequate for the task of administering justice.

8. Second, establishing a professional, independent and adequately resourced internal justice system is critical because it is only such a system that can generate and sustain certainty and predictability, and thus enjoy the confidence of managers, staff members and other stakeholders. A justice system is only as good as the level of respect and confidence it commands.

9. Third, establishing a professional system of internal justice is essential if the United Nations is to avoid the double standard — which currently exists — where the standards of justice that are now generally recognized internationally and that the Organization pursues in its programmatic activities are not met within the Secretariat or the funds and programmes themselves. These international standards include the right to a competent, independent and impartial tribunal in the determination of a person's rights, the right to appeal and the right to legal representation.

10. When "in the determination of ... his rights and obligations in a suit at law"[1] an individual is deprived of the right to appeal, this severely weakens the fairness of the procedure. International standards establish the right to "an effective remedy",[2] "the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal"[3] and "the right to an appeal".[4] Hearings, too, are a clear requirement in international standards whenever there are disputed issues of fact.[5] To guarantee due process and to facilitate decisions, oral hearings should be promoted and accepted. Finally, to guarantee equality before courts and tribunals, access to lawyers and legal services is crucial.[6] In the present system, staff members

[1] International Covenant on Civil and Political Rights, article 14 (see resolution 2200 A (XXI), annex).

[2] Convention for the Protection of Human Rights and Fundamental Freedoms, article 13 (United Nations Treaty Series, vol. 213, No. 2889).

[3] American Convention on Human Rights, article 25 (United Nations Treaty Series, vol. 1144, No. 17955).

[4] African Charter on Human and Peoples' Rights, article 7 (United Nations Treaty Series, vol. 1520, No. 26363).

[5] Universal Declaration of Human Rights, article 10 (resolution 217 A (III)); International Covenant on Civil and Political Rights, article 14 (see resolution 2200 A (XXI), annex).

[6] The Basic Principles on the Role of Lawyers clearly establish that "all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings" (para. 1) and that "Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons", para. 2 (see *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publications, Sales No. E.91.IV.2), chap. I, sect. B).

have, theoretically, the right to a lawyer of their choice, but, in practice, access is not effective and equal.

11. Neither the Joint Appeals Board (JAB) nor the Joint Disciplinary Committee (JDC), the main bodies in which the formal processes of the internal justice system are initiated, has power to take binding decisions. They can only make recommendations and thus cannot determine the rights or obligations of the persons concerned. This leaves UNAT as a one-tier justice system with no right of appeal. At the same time, JAB and JDC are composed of staff members acting in an advisory capacity to the Secretary-General and, thus, do not meet the basic standards required to guarantee their independence. That the administration of justice in the United Nations lags so far behind international human rights standards is a matter of urgent concern requiring immediate, adequate and effective remedial action.

12. Several attempts have been made over the past two decades, without success, to improve the internal justice system, and in 1995 a far-reaching overhaul was recommended by the Secretary-General.[1] Despite the best intentions of all parties involved, fundamental problems have continued to bedevil the system.

13. It is in this context that the Redesign Panel has undertaken its assignment and presents its findings and recommendations — in the hope that the internal justice system will be fundamentally redesigned to achieve expeditious, efficient and effective justice that is independent and also guarantees the rule of law as an indispensable component of the management of the United Nations. The Redesign Panel believes that reform of the internal justice system is a sine qua non for broader management reform of the Organization. A large part of the current management culture in the Organization exists because it is not underpinned by accountability. Accountability can be guaranteed only by an independent, professional and efficient internal justice system.

14. In essence, the Redesign Panel proposes the creation of a new, decentralized, independent and streamlined system by strengthening the informal system of internal justice, by providing for a strong mediation mechanism in the Office of the Ombudsman and by merging the offices of the Ombudsman of the United Nations and its funds and programmes; by establishing a new formal system of justice that replaces advisory boards with a professional and decentralized first-instance adjudicatory body that issues binding decisions that either party can appeal to UNAT; and by guaranteeing "equality of arms" thus ensuring for all staff members access to professionalized and decentralized legal representation.

III. A unified system

Scope and jurisdiction

15. The Organization's internal justice system — informal and formal — is applicable only to those who are considered staff members. UNAT jurisprudence and United Nations practice has led to a restrictive view of who is a staff member. Persons employed on special service agreements and individual contractors are not included.

[1] See A/C.5/50/2.

16. The UNAT Statute establishes that the Tribunal is competent to hear applications "of staff members of the Secretariat of the United Nations" (article 2.1). It also establishes that the Tribunal shall be open "to any other person who can show that he or she is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied" (article 2.2 (b)).

17. Although the wording of article 2.2 (b) could lead to the conclusion that it provides coverage to persons other than staff members, the phrase "staff regulations and rules upon which the staff member could have relied" has led to a restrictive interpretation.[8]

18. Some members of the Secretariat informed the Redesign Panel that locally recruited personnel in peacekeeping missions are staff members with full rights in the internal justice system. The reality on the ground is different. Agreements between the United Nations and host States governing the status of peacekeeping missions provide for a special dispute resolution framework for locally recruited staff. It appears, however, that no such framework has ever been established. Furthermore, many locally recruited personnel in peacekeeping missions are employed for long periods as "individual contractors".

19. The General Assembly has already proposed an expansion towards other categories of personnel. In its resolution 59/283, paragraph 19, it established a clear guideline towards more comprehensive coverage.

20. All individuals appointed to perform work for the Organization by way of personal services should have full access to the informal and formal justice system of the United Nations. The Redesign Panel considers that, in addition to those currently covered by article 2 of the Statute of UNAT, the system of justice should be extended to:

(a) Any person appointed by the Secretary-General, the General Assembly or any principal organ to a remunerated post in the Organization;

(b) Any other person performing personal services under contract with the United Nations. This category includes consultants and locally recruited personnel of peacekeeping missions.

Offices away from Headquarters, peacekeeping missions and field operations

21. Two thirds of all staff of the United Nations are employed in field operations away from Headquarters. This situation requires a radical shift in emphasis. As a general rule, the system of justice in the field is very weak. The most important problem is the almost total lack of knowledge among staff members of their rights and avenues for redress.

[8] The practice of UNAT has not been to extend access to "other beneficiaries" different from staff members, former staff members or persons entitled to rely on the rights of staff members (Judgement No. 98, *Camargo*, 1965; Judgement No. 115, *Kompton*, 1968). Nevertheless, UNAT has established that it has jurisdiction regarding individuals appointed by the General Assembly as Inspectors of the Joint Inspection Unit (Judgement No. 656, *Kremer and Gourdon*, 1994; Judgement No. 1074, *Hernández Sánchez*, 2002).

22. The Redesign Panel stresses that unless a robust system of justice is established in the field at both the informal and formal levels, reform will be of limited impact.

23. There is, in practice, no legal representation available to staff members in field duty stations. Many staff do not even know of the existence of the Panel of Counsel, which is supposed to provide legal advice to staff. Even were they to be aware of the existence and role of the Panel, distance and other logistical problems would preclude its effective utilization. In regard to recourse mechanisms, there are no standing JABs and JDCs in the field.

24. There are particular problems with respect to misconduct and disciplinary cases, which constitute the bulk of cases in peacekeeping missions. In disciplinary cases, physical distance between field duty stations and Headquarters results in substandard justice. Staff members in field offices and peacekeeping missions who are the subject of disciplinary proceedings before JDCs at Headquarters are frequently interviewed by telephone. They have little or no opportunity to present their case and answer questions in person. This practice is only a few degrees removed from trials in absentia. The Organization must in all cases make budgetary provision for a staff member accused of misconduct to appear before disciplinary proceedings in person, even when he or she has the services of counsel.

25. The absence of standing JABs and JDCs in the field and the excessive reliance on the Office of Human Resources Management at Headquarters in New York are major causes of delay in the justice system. These delays have a negative impact on the management of peacekeeping operations and offices away from Headquarters.

26. Heads of offices away from Headquarters have a formal delegation of authority for recruitment and some other aspects of human resources management. But often they do not have authority to initiate disciplinary measures.

27. It is essential to give much greater delegation of authority to special representatives of the Secretary-General and heads of offices away from Headquarters in disciplinary sanctions, including dismissal, but subject to the right of the sanctioned staff member to challenge such decisions in the formal justice system. To ensure that decisions are taken fairly and transparently, a standing panel on disciplinary matters should be established in all peacekeeping operations and offices away from Headquarters as an advisory body to review and recommend disciplinary action.

28. The Redesign Panel found that there is a perception of unequal justice in the United Nations. While this perception cuts across the whole internal justice system, it is particularly acute in field duty stations. The perception is that in the handling of cases double standards are applied for staff members of different levels and different nationalities. A recent report of the Office of Internal Oversight Services[9] confirms this widespread perception that was shared with the Redesign Panel by several stakeholders. The Redesign Panel considers that local staff who work for the United Nations in field missions and offices away from Headquarters should be fully represented in all consultative committees and advisory bodies.

[9] A/60/713, para. 11.

29. There is no clarity about the functioning of the internal justice system in peacekeeping operations. This problem has several facets, the most important of which is the absence of clear frameworks governing the relationship between the Office of Internal Oversight Services and the Conduct and Discipline Unit of the missions. There has been an expansion of the role of that Unit beyond its actual mandate as a result of gaps in the internal justice system in the mission, such as the absence of an ombudsman and a representative of the Panel of Counsel.

30. It is necessary to clearly delimit the roles of the Office of Internal Oversight Services, which deals with category I complaints,[10] and other bodies that deal with the rights and obligations of staff members. Because of its asserted autonomy, no feedback is provided to the Conduct and Discipline Unit or to human resources officers in the field on matters that also fall within their authority when the Office of Internal Oversight Services takes over the investigation of complaints. This results in a significant coordination gap, which generates frustration among mission management.

31. This lack of coordination has an adverse impact on the image of the Organization, especially in cases of allegations of sexual exploitation and abuse, if the Conduct and Discipline Unit is unable to provide concrete updates to the mission's leadership or to external bodies representing the alleged victim. It also has the potential to have an adverse impact on the proposed new internal justice system. The Redesign Panel recommends that a clear framework of cooperation and delimitation of roles between the Office of Internal Oversight Services and the United Nations internal justice system be established as a matter of priority.

32. The Panel also recommends that Ombudsmen be appointed for peacekeeping missions that have a large number of civilian staff, in accordance with the proposals contained in section IV below. Post resources for this function should be an integral part of the budget of the missions.

33. The Boards of Inquiry, which investigate, among other things, incidents in peacekeeping missions involving nationals of the host country and/or significant damage to United Nations property, is an important component of the internal justice system. The composition, status and procedures of the Boards, need to be reviewed and strengthened. In most peacekeeping missions, the composition of the Boards is ad hoc. There are also difficulties in identifying qualified staff members who are prepared to devote the necessary time to such an assignment.

34. Considering the important role played by Boards of Inquiry in the administration of justice in peacekeeping missions and the complex issues they frequently have to deal with, a standing Board of Inquiry should be established in all peacekeeping missions, with full-time members in large missions. It is also recommended that special representatives of the Secretary-General give greater attention and support to the complex but essential work of the Boards to ensure consistent standards. The special representatives, in consultation with the Department of Peacekeeping Operations at Headquarters, should ensure effective follow-up and implementation of Board of Inquiry findings and recommendations.

[10] This category of investigations covers severe misconduct, abuse of authority, gross negligence, gross mismanagement, procurement fraud and sexual exploitation and abuse. Complaints outside this category in peacekeeping missions are investigated by the Special Investigation Unit of the Security Section.

35. The Redesign Panel was not able to visit any of the field operations of the funds and programmes. However, it consulted on this issue with senior management and staff representatives in New York and Geneva. The Panel is of the view that the proposed new system of internal justice will be appropriate to the needs of their field staff, although their administrative arrangements — for example, with respect to disciplinary measures — may have to differ because of their management structures.

36. Because of its special status, the Panel has not included the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in its redesign of the internal justice system. However, there is no reason why the proposed new system should not be extended to it after appropriate consultations.

IV. The informal system

37. The current system of informal justice in the Organization comprises seven different avenues of intervention: (a) supervisors, human resources officers and executive officers; (b) staff counsellors; (c) staff representative bodies; (d) the Panel of Counsel in its pre-litigation consultative role; (e) the departmental focal points for women; (f) the Panels on Discrimination and Other Grievances; and (g) the Ombudsman.[1] The first five are not independent third parties that can reconcile disputes, but rather provide preliminary advice or counsel to staff members about their problems. Although these mechanisms play a useful advisory role, they constitute neither a proper alternative nor a complement to the formal justice system.

38. The Panels on Discrimination and Other Grievances were established in 1977 as an informal grievance procedure emphasizing mediation to address allegations of discriminatory treatment. They have not functioned as intended. They are ineffective, and few, if any, Panels now function. They should be abolished.

39. The Office of the Ombudsman holds the most promise as a viable and integrated alternative dispute-resolution institution. An expanded, integrated and geographically decentralized Office of the Ombudsman can unify the currently disparate and overlapping informal dispute-resolution processes and thus provide a valuable complement to the formal justice system.

Ombudsmen in the United Nations system

40. The Secretary-General appointed the first United Nations Ombudsman on 14 June 2002[2] and launched the Office of the Ombudsman on 25 October 2002.[3]

[1] See ST/IC/2004/4. In addition, the Ethics Office was established on 30 December 2005 to advise staff on ethics issues and to review and report on complaints of retaliation (see ST/SGB/2005/21, section 5, and ST/SGB/2005/22).

[2] Pursuant to General Assembly resolutions 55/258 and 56/253.

[3] See ST/SGB/2002/12. The United Nations Office of the Ombudsman covers Headquarters, offices away from Headquarters, including UNOG, UNOV and UNON; regional commissions; ICTR, ICTY; missions administered by the Department of Peacekeeping Operations and political and peacebuilding missions; UNCTAD; UNEP; UN-Habitat; United Nations entities such as OHCHR, UNU and UNSSC; and certain research and training institutes such as UNITAR.

That same month, an Ombudsperson was established for UNDP, the United Nations Population Fund (UNFPA) and the United Nations Office for Project Services (UNOPS). The United Nations Children's Fund (UNICEF) was recently added to this grouping, resulting in a single Ombudsperson position serving UNDP, UNFPA, UNOPS and UNICEF.[14] The Office of the United Nations High Commissioner for Refugees (UNHCR) Mediator, established in 1993, reports to the Deputy High Commissioner for Refugees and works primarily as a facilitator and objective adviser to staff on workplace matters.

41. The terms of reference of all three Ombudsmen empower them to consider conflicts relating to employment, including managerial practices, in their respective spheres of jurisdiction. They have authority to track and analyse issues and trends and to formulate recommendations for changing policies, procedures and practices in their regular reports.[15]

Strengthening the ombudsman's role

42. An ombudsman must have both proactive and preventive roles: the Organization and the funds and programmes need both an objective third party to help resolve disputes and an independent monitor to report maladministration in employment-related matters. Ombudsmen are usually classified in two types: (a) "Classic" ombudsmen, established by legislative act, with broad powers to inquire into complaints of maladministration by governmental agencies and to recommend appropriate remedies, and (b) "Organizational" ombudsmen, working informally, within the organizations that created them, to resolve conflicts through conciliation or mediation, while also acting as fact-finders and agents for organizational change.

43. Both of these models are in evidence in the current terms of reference of the United Nations Ombudsman, the UNDP/UNFPA/UNICEF/UNOPS Ombudsperson and the UNHCR Mediator. Their terms of reference, which are drafted in broad language, include the identification and resolution of disputes through mediation and/or facilitation.[16] All three Offices are relatively new, have operated under resource constraints and are still implementing the full range of their terms of reference, especially as regards their monitoring function and formal mediation.

44. It is highly desirable to have an informal justice system that combines in an office of the ombudsman both the monitoring of maladministration and the mediation of disputes. Bringing dispute-resolution activities within an office of the ombudsman — by means of formal mediation by the ombudsmen and by full-time mediators — will provide the office with a centralized source of data from which to

[14] Office of the UNDP/UNFPA/UNOPS Ombudsperson, "Report on the work of the Office for the period 1 August 2004 to 31 December 2005", p. 7. Other organs within the United Nations family have also established ombudsman offices (or similar offices under other names), including those of the WHO/PAHO Ombudsperson, the UNESCO Mediator, the WIPO Mediator, the ILO Ombudsperson, the WFP Ombudsman, the ICAO Ombudsman, the ITU Mediator, the IOM Ombudsperson, the IMF Ombudsperson and the World Bank Ombudsman.

[15] See ST/SGB/2002/12 and EC 1995/SC.2/CRP.23.

[16] The report on the work of the Office of the UNDP/UNFPA/UNOPS Ombudsperson for the period 1 August 2004 to 31 December 2005 is a valuable example of the Ombudsperson's proactive role.

identify systemic problems and trends, such as ambiguities in the United Nations Staff Regulations and Rules affecting contractual modalities and entitlements. Such data — which can be collated while respecting the obligation of confidentiality — would be extremely difficult to gather if informal dispute resolution were to remain scattered, as it is at present.

45. Moreover, combining monitoring and dispute-resolution functions will alleviate the current confusion among staff about where to turn for assistance with their problems. By replacing the current maze of overlapping processes with a "one-stop shopping" approach to informal dispute resolution, it will parallel the formal justice system. The newly established Ethics Office, an essential component of the reform of the Organization, is nevertheless one example of this situation, as both it and the current Office of the Ombudsman receive complaints regarding retaliation against whistle-blowers. The role of the Ethics Office should be clearly defined in order to avoid unnecessary confusion and duplication.

46. Like the formal justice system, the informal system — centred on the Office of the Ombudsman — must be a single and integrated whole that merges the existing United Nations Ombudsman, the UNDP/UNFPA/UNICEF/UNOPS Ombudsperson and the UNHCR Mediator. It should cover all aspects of workplace administration and serve all staff. Unifying these Offices and sharing resources and facilities will both strengthen the informal system of justice and harmonize practices and policies within it.

47. The administration of the new Office should have its centre at Headquarters, with its operations largely decentralized to provide easier access and quicker response. This will bring important benefits to the justice system as a whole.

48. First, an integrated Office of the Ombudsman will offer coherence and consistency throughout the Organization by directing the problems of all staff members regarding contract disputes, entitlements, standards of conduct (including abuse of authority and retaliation), non-renewal or termination issues, questions of career advancement and the like to a single office. Second, consolidating individual informal dispute resolution within the Office of the Ombudsman will give the Ombudsmen a privileged position from which to monitor systemic problems and to recommend solutions. Third, the decentralization of the Office is based on recognition that the current Ombudsman and Ombudsperson have in recent years seen a marked increase (to about 75 per cent) in the proportion of cases originating away from Headquarters. For field staff in particular, decentralization is the only viable means of providing effective and timely informal dispute resolution. Finally, closing gaps of access and avoiding duplication of services will benefit all staff and will save human and financial resources, especially at the regional level.[1]

49. The proposed Office of the Ombudsman should have two components: the Ombudsmen and the Mediation Division. The Ombudsmen will mediate high-profile disputes and also monitor and report on problems of maladministration. The

[1] The three existing Offices resolved up to 1,300 cases in 2005. The Offices currently consist of 16 staff members, the majority of them being at the Professional and higher levels (P and D). The 2006-2007 budget for the Office of the United Nations Ombudsman will reserve three more positions for Ombudsmen in Geneva, Vienna and Nairobi (all D-1). In addition, there are four consultant Ombudspersons who are paid up to $30,000 each.

Mediation Division will mediate disputes upon referral by the Ombudsmen or from judges in the formal system of justice.

50. The oversight of the entire Office should be the responsibility of the United Nations Ombudsman, at the Assistant Secretary-General level, whose roles will be monitoring and reporting maladministration with regard to employment-related conflicts, practices and policies and mediating disputes that raise broad systemic problems or that would benefit from the participation of a high-level mediator.

51. An Ombudsman for the funds and programmes, at the D-2 level, will perform the same functions as the United Nations Ombudsman, but for the funds and programmes, including UNHCR.

52. Five regional Ombudsmen, each at the D-1 level, will head regional offices in Africa (Nairobi), Europe (Geneva), the Middle East (Amman/Beirut), Asia and the Pacific (Bangkok) and Latin America and the Caribbean (Santiago/Panama City). Two Deputy Regional Ombudsmen, each at the P-5 level, will be based in Africa (Addis Ababa/Johannesburg) and Europe (Vienna) to assist the African and European regional Ombudsmen. The regional and deputy regional Ombudsman Offices will each have jurisdiction over all matters arising in their region and will perform both monitoring functions and mediation. They should be selected and appointed jointly by the United Nations Ombudsman and the funds and programmes Ombudsman. Regional Ombudsmen should each be provided with a legal officer or case officer at the P-2/P-3 level to provide necessary assistance for the activities of the new decentralized Office.

53. The Redesign Panel has concluded that the effective decentralization of the internal justice system cannot be achieved without recognizing the importance of peacekeeping operations in the work of the Organization. Thus, the Panel recommends that Ombudsmen be appointed within the Office of the Ombudsman to serve peacekeeping missions with large numbers of civilian staff under the budgets of the relevant missions. These Ombudsmen should be selected and appointed by the United Nations Ombudsman and report directly to her or him.

54. A secretariat at Headquarters with a Director at the D-1 level, as is currently the case, will administer the work of the Ombudsmen. The Director will manage the business of all the Offices by for example, ensuring the automatic follow-up of all cases, designing and maintaining computer links between the Headquarters and field offices and protecting the strict confidentiality of all Office business.

55. A Mediation Division — located at Headquarters and under the authority of the United Nations Ombudsman — will provide formal mediation services for the Organization and the funds and programmes. The Division will comprise a coordinating mediator at the D-1 level and two full-time senior mediators at the P-5 level. In addition, the coordinating mediator will maintain a list of international professional mediators who can be called upon if reasons of expedience, language or cultural sensitivity so require.[18] As the Ombudsmen will not be able to undertake mediation in all cases, the Mediation Division will complement them and will also provide mediation services for the formal justice system.

[18] The list will represent a pool of on-call qualified and experienced mediators, who should be as linguistically, culturally and geographically representative as possible. Members will be paid per mandate according to a scale set by the coordinator.

56. The coordinating mediator will receive and administer the voluntary joint requests for mediation by which both parties consent to have a mediator act as an objective third party to help them reach a mutually acceptable settlement. Parties may request mediation before litigation or disputes can be referred to the Mediation Division from the formal system.

57. In any mediation — whether conducted by an Ombudsman or by a mediator from the Mediation Division — any settlement reached should be signed by the parties and followed, if necessary, by an administrative decision giving effect to the agreement. Anything said or written during the mediation process is wholly confidential and should be inadmissible in subsequent litigation.

58. The Secretary-General will appoint the United Nations Ombudsman; the Ombudsman for funds and programmes will be appointed by the executive heads of those bodies. It is proposed that there be a selection committee composed of a staff representative, a management representative and two distinguished outside ombudsmen one appointed by the staff and one by the management, and chaired by a third distinguished outside ombudsman appointed jointly by the Secretary-General and the executive heads of the funds and programmes. The selection committee should submit a list of not fewer than three names for each position, taking into consideration the nature and the characteristics of the Organization, on the one hand, and the funds and programmes, on the other.

59. A term of five years is appropriate for both the United Nations and the funds and programmes Ombudsmen. To avoid any appearance of political or administrative bias, no reappointment should be possible. All other Ombudsmen should be appointed to renewable two-year terms. All the Ombudsmen and mediators should be removable by the appointing authority only for incapacity or proven misconduct.

60. The funds and programmes Ombudsman will prepare a report on funds and programmes matters, which the United Nations Ombudsman will incorporate into the Office's annual general report. The latter report will include an overview of all activities of the Office and identify and recommend solutions to any systemic problems. The annual general report will be presented to the General Assembly by the United Nations Ombudsman and to the joint executive boards of the funds and programmes by the funds and programmes Ombudsman.

61. The independence of the Office requires budgetary autonomy. Its effectiveness and accessibility depend on sufficient resources for adequate staff, capacity for growth and necessary travel to field duty stations.[9] The regional offices are essential to the mission of the Office and should be adequately funded, directly from Headquarters, to ensure their independence from local management control.

[9] Resource constraints have compromised access in the current system. In Nairobi, the Ombudsman post serving the United Nations Office at Nairobi and the United Nations Environment Programme has been vacant for three years; in Vienna, a pilot project was initially staffed with a part-time retired staff member but the position has been vacant since April 2005.

V. The formal system

62. The present formal justice system is based on the administrative law model, with the Secretary-General making final decisions on appeal following peer review. Those decisions may be challenged in UNAT. Subject to one important qualification, the system closely resembles those of the specialized agencies of the United Nations that are subject to the jurisdiction of ILOAT. That qualification is that the powers of the UNAT are more limited than those of ILOAT.

63. There are several advisory boards and committees within the formal system, of which the most significant are the JDCs for disciplinary matters and JABs concerned with appeals against administrative decisions affecting individual staff members.[20] There are JDCs and JABs in New York, Geneva, Vienna and Nairobi. These bodies deal with matters concerning staff of the Secretariat and the various funds and programmes, while UNICEF and UNDP each has its own JDC. These bodies are advisory in nature and are composed of staff members appointed by the Secretary-General and elected by the staff, with the Chairperson appointed by the Secretary-General. Members are volunteers who generally lack legal qualifications. They must attend to their normal duties in addition to their service on a JAB or JDC.

64. In recent years, there have been difficulties in recruiting volunteers and, with the increase in fixed-term contracts relative to permanent contracts, there is a growing concern on the part of staff about the independence of both bodies. Moreover, problems with volunteers' availability generate delays.

65. Disciplinary proceedings are protracted, and, frequently, more than a year will pass before disciplinary measures can be implemented. Proceedings before a JDC usually take six to nine months, and its recommendations must then be considered at Headquarters in New York before any disciplinary measures can be taken.

66. Because JDCs and JABs have a common secretariat and priority is quite properly given to disciplinary matters, there are egregious delays in JAB proceedings. Before initiating an appeal, a staff member must seek a review of the decision, usually at Headquarters in New York, a process which takes 60 days.

67. After an appeal has been filed, management has two months in which to file a reply. However, JABs frequently grant an extension for the filing of management's reply.[21] Usually, there are two further pleadings — one from the staff member and a final pleading from the management. Time limits for these are frequently extended. Moreover, as a result of some lack of certainty in JAB rules, the staff member and management are often permitted to file additional comments before a JAB panel is constituted to hear the appeal. There are often further delays between the filing of

[20] There are also Classification Appeals and Review Committees, the Claims Board, Medical Boards relating to sick leave, the Advisory Board on Compensation Claims and the Central Examination Board. Decisions with respect to recommendations made by the Claims Board, the Medical Boards and the Central Examination Board now go to JAB, while those made with respect to the recommendations of the other two go directly to UNAT. Additionally, there are rebuttal panels, which consider performance appraisal reports. There is no right of appeal with respect to an appraisal rating, although a staff member may appeal a subsequent administrative decision based on a rating made after proceedings before a rebuttal panel.

[21] This situation may improve with the implementation of paragraph 32 of General Assembly resolution 59/283.

final documents and the decision of the Secretary-General. The entire process generally takes at least three years from beginning to end.

68. The JDC and JAB reports are of uneven quality with respect to both their analysis of the facts and their understanding of the Staff Rules. This is to be expected given that their membership is ad hoc and that members generally lack legal qualifications. Thus, unanimous recommendations in favour of staff members are not always accepted. However, this is generally perceived by staff members as an indication of management's unwillingness to be bound by adverse recommendations and as evidence that the system operates to their disadvantage.

69. Decisions rejecting the recommendations of JDCs and JABs may be the subject of an application to UNAT. Proceedings before UNAT usually take two years.[22] There is a lack of consistency in some of its decisions and a poorly developed jurisprudence. This has an adverse impact on the workings of JABs and JDCs and impedes proper decision-making by management.

70. Although the administrative law model provides a means of redress for breach of terms of appointment or conditions of service, it has a significant defect: there is no simple procedure by which to obtain a remedy unless and until there is a formal decision.[23]

71. A number of the difficulties within the formal justice system stem from the Statute and the jurisprudence of UNAT. By article 10.1 of its Statute, UNAT may order specific performance. However, it is required at the same time to fix compensation (normally limited to two years' net base salary), which the Secretary-General may decide to pay as an alternative if that is considered to be in the interests of the Organization. The power of the Secretary-General to choose between specific performance and the payment of limited compensation can, and sometimes does, result in inadequate compensation, particularly in cases of wrongful termination or non-renewal of contract. A system that cannot guarantee adequate compensation or other appropriate remedy is fundamentally flawed. More significantly, a system that does not have authority to finally determine rights and appropriate remedies is inconsistent with the rule of law.

72. The decisions of UNAT are not always consistent, and its jurisprudence is not well developed. In particular, it does not have a coherent jurisprudence as to the duties of an international organization to its staff. Thus, there is a widespread view, which is largely correct, that the formal justice system affords little, if any, protection of individual rights, such as the right to a safe and secure workplace or the right to be treated fairly and without discrimination.

[22] This is, partly because of lengthy and, often, repetitive pleadings, partly because of the extension of time limits (often for six months for management's reply) and partly because of UNAT work patterns and methods. Much of the Tribunal's time is taken up with applications for revision of judgements, and its efficiency would be improved if all judges prepared their draft judgements before attending the sessions in New York and Geneva.

[23] To overcome this problem, the rules of some specialized agencies and the ILOAT Statute have provisions deeming a negative decision to have been taken if notification of a decision has not been made within a specified time. There is no equivalent provision within the UNAT Statute. However, UNAT has recently held that it has jurisdiction with respect to "implied" decisions. Judgement No. 1157, Andronov.

73. In summary, the structure of the formal justice system is both fragmented and overcentralized. It is slow, expensive and inefficient. It does not provide proper or adequate remedies and fails to guarantee individual rights. It promotes neither managerial efficiency nor accountability. It generally lacks transparency and fails to satisfy minimum requirements of the rule of law. It enjoys neither the confidence nor the respect of staff, management or Member States.

74. Given the defects and limitations of the present system, the Panel is of the view that a fundamentally different system should now be adopted. Moreover, the Panel is satisfied that the present system of peer review cannot be sustained.[24] Thus, the Panel recommends the establishment of a two-tiered system comprising a first-instance decentralized tribunal, the United Nations Dispute Tribunal, to be created by resolution of the General Assembly and composed of professional judges with power to make binding decisions. The jurisdiction of UNAT should be expanded to hear appeals from the Dispute Tribunal on the part of the Organization, the funds and programmes and staff alike. To emphasize the predominantly appellate nature of its jurisdiction, UNAT should be renamed the United Nations Appeals Tribunal.

75. To simplify access to justice, the Dispute Tribunal should replace existing advisory bodies, including the JDCs and JABs, but not including the rebuttal panels and Classification Appeals and Review Committees.[25] However, it is proposed that adverse decisions following proceedings before the latter two bodies may be the subject of proceedings before the Dispute Tribunal.

76. To ensure that all staff, particularly those in the field, have access to justice, the Dispute Tribunal should have registries in New York, Geneva, Nairobi, Santiago and Bangkok. New York, Geneva and Nairobi should each have a full-time judge, while Santiago and Bangkok should each have a half-time judge. There should be regular monthly sittings at each of the three headquarters registries and every two months in Santiago and Bangkok. Sittings should be arranged so that for at least one week of every two months, two judges will be available to hear matters at each of the registries and, if required, at other places within the region.

77. The United Nations Dispute Tribunal should have jurisdiction in four areas:[26]

(a) Complaints alleging non-compliance with terms of appointment, conditions of employment or the duties of an international organization to its staff, regardless of the type of contract under which they are employed and whether or not there has been a formal decision;

(b) Disciplinary matters;

[24] The difficulty in finding volunteers is now acute. In the recent past, for example, it was impossible to convene a JAB in New York to hear two applications for suspension of action before decisions bringing service to an end took effect. The problems are likely to worsen as the United Nations moves towards more fixed-term contracts, both in terms of the number of appeals and applications for suspension of action and in terms of finding sufficient volunteers who feel able to act, and who will be perceived as acting, independently.

[25] These bodies are concerned with performance appraisal and classification review, both of which require expert knowledge.

[26] A more precise statement of the intended jurisdiction of the Dispute Tribunal is set out in annex I.

(c) Applications by the Organization or funds and programmes to enforce the relevant staff and financial rules relating to accountability against staff members;[27]

(d) Actions by a staff association on behalf of its members to enforce the Staff Rules and Regulations and related administrative instructions or on behalf of a particular class of its members affected by a particular administrative decision.

78. It is necessary to elaborate on these heads of jurisdiction. The first is intended to overcome problems that arise in the present system if a formal decision has not been made. It is also intended that it should cover matters that in the past were dealt with by the Panels on Discrimination and Other Grievances. It will also allow for complaints with respect to conduct that is inconsistent with the duties of the Organization to its staff or that infringes their individual rights.

79. As regards the second head of jurisdiction, with the abolition of the JDC's new procedures will be required for disciplinary matters. The existing rules and administrative procedures result in unnecessary delays. The current practice is to refer the question of whether or not to take disciplinary action to Headquarters in New York, no matter where the staff member is stationed. Paradoxically, at this stage a decision may be taken to summarily dismiss a staff member, leaving it to him or her to appeal to a JDC, while a decision to impose some lesser measure can be taken only by management after seeking the advice of a JDC. There is reason to believe that, because of this, staff members are sometimes summarily dismissed when less severe measures would be more appropriate, and on other occasions no action is taken at all.

80. The Panel is of the view that disciplinary procedures should be brought into line with those in most national jurisdictions and most other international organizations. Thus, it is proposed that, after consultation with the relevant standing panel on disciplinary matters, referred to in paragraph 27 above, the executive heads of offices away from Headquarters and peacekeeping missions should have power to impose whatever disciplinary measure is considered appropriate. Staff members should have an immediate right to challenge the decision before the United Nations Dispute Tribunal, where, as in cases previously referred to a JDC, the onus should be on the Organization to establish misconduct.

81. With the abolition of the JDCs, it will be necessary to establish new procedures to enforce the rules relating to financial accountability. Hence, the third head of jurisdiction.

82. Because staff members are sometimes reluctant to enter the formal justice system for fear of reprisals, it is considered necessary to give staff associations an independent right to bring action to enforce the Staff Rules and Regulations.[28] This is consistent with the jurisprudence of ILOAT[29] and will help promote accountability. The right of a staff association to bring a class or representative action will promote efficiency in the judicial process.

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[27] The present rules are financial rule 101.2 and staff rules 112.3, 212.2 and 312.2.

[28] As the various staff associations owe their existence to the Organization or its funds and programmes, it is irrelevant that they lack legal personality according to national law.

[29] ILOAT jurisprudence allows that a member of the committee of a staff association may bring action to enforce the Staff Rules if there is no one else who can do so. See ILOAT Judgement No. 2563 (*Wunsch and Others v. European Patent Office*).

83. The United Nations Dispute Tribunal should have power to grant final and binding relief by way of:

(a) Specific performance, injunction and declaratory decree, including the order that an appointment be set aside;

(b) Compensation and damages, including, in exceptional circumstances, exemplary or punitive damages;

(c) Orders for the payment of interest when justified;

(d) Orders for the payment of out-of-pocket expenses and legal costs, provided that an order should be made for the payment of a staff member's legal costs only if, in the opinion of the judge, it was appropriate to have private representation.

84. The Dispute Tribunal should also have power to make interim orders, including orders for the suspension of action in any case where there is a good prima facie case and the award of compensation or damages would be inadequate and power to summarily dismiss matters that are clearly irreceivable or are frivolous or vexatious. It should also have power to make its own rules, including with respect to interveners and *amici curiae* (friends of the court). Importantly, it should be given express power to refer the evidence in any matter to the Secretary-General for consideration of possible disciplinary action, action to enforce financial accountability or the lifting of immunity.

85. It is necessary to address the power to order that an appointment be set aside. The current practice and jurisprudence is that an appointment, once made, cannot be set aside no matter how flawed the appointment process. This is contrary to the view taken by ILOAT and, thus, contrary to the law that applies to specialized agencies subject to its jurisdiction. Current United Nations practice and jurisprudence not only results in persons who have been wrongfully appointed being retained in their posts, but may also result in an award of compensation to candidates whose appointments have been set aside.[10]

86. To bring the United Nations system into line with the practice of most other international organizations and to permit mediated settlements, it is recommended that the regulations be amended to allow a post to be declared vacant by the Secretary-General if the appointment process was flawed.[11] This will ensure respect for the rule of law. Further, there should be many fewer cases in which damages are awarded to candidates whose appointments have been set aside, and damages, if awarded, should be much less.

87. With the streamlining of the formal system of justice, it is recommended that the present system of administrative review before action be abolished. Generally, the review function falls to the Administrative Law Unit within the Office of Human Resources Management at Headquarters in New York, regardless of where the staff member is posted. Few staff members receive a reasoned response, the vast majority

[10] UNAT recently awarded three years net base salary to a person whose rights were infringed by a flawed appointment: Judgement No. 936, *Salama*. In an earlier case, two staff members were each awarded 18 months net base salary: Judgement No. 914, *Gordon and Pelanne*.

[11] For example, if the appointee lacked the stipulated qualifications or there was some other irregularity in the process.

receiving a letter at the end of the review period (60 days) telling them that they may file a statement of appeal with JAB.

88. Under the proposed system, proceedings should be commenced by a staff member by filing a complaint against the Organization or fund or programme by which he or she is employed. Because the Dispute Tribunal will have local registries with facilities for electronic filing, actions should be commenced not later than two months after the cause of action arose. There should be an exception in cases where the parties have agreed to extend the period so as to facilitate mediation, and otherwise only if an extension is granted. An order for extension should be granted only within six months of the act or decision in question and only if it is established that proceedings could not reasonably have been commenced at an earlier date.

89. The complaint should identify the decision or conduct that is challenged, the person responsible for it, the date or dates on which it occurred and, in the case of injury or loss, the date on which it was first suffered. Additionally, it should state the grounds of complaint and the relief claimed. The complaint should be forwarded by the Dispute Tribunal to the person whose decision or conduct is at issue and also to the appropriate designated legal representative of the Organization or fund or programme. The person whose decision or conduct is in question should personally file an answer to the complaint within 30 days. There should not be more than one further pleading by each side after the answer is filed, and unless mediation is sought, the time for filing those pleadings should not exceed 21 days.

90. Mediation is an important part of the proposed new formal system. Either side can seek mediation at any time before a matter proceeds to final judgement. Ordinarily, mediation is voluntary, but, under the proposed new system, a judge may order that the parties attempt mediation if that is appropriate to the circumstances of the case. Mediation may proceed within the Mediation Division established in the Office of the Ombudsman or, if a judge so orders, may be performed by a judge[32] or, if the judge considers it appropriate, by a registrar. To avoid delay, strict time limits should be fixed for mediation.

91. A registrar should be located at each registry, with responsibility for the case management of all matters filed in that registry. This includes the transmission of complaints to the person whose acts or decisions are in question and to the designated legal representative; ensuring that time limits and procedural requirements are complied with; subject to review by a judge, granting extensions in cases proceeding to mediation or otherwise in exceptional circumstances; and after consultation with a judge, fixing the times and dates for hearings and issuing orders for the production of documents or the attendance of witnesses. To ensure that the system works effectively, registrars should also be responsible for identifying matters to be referred to a judge for possible summary dismissal or for directions as to the further conduct of the case, including for fast-tracking or priority hearing.

92. The proposed United Nations Dispute Tribunal must have power to hold oral hearings and should be required to do so in any case involving disputed issues of fact. The hearings should be public, including by videoconference if necessary.

[32] If judicial mediation does not result in a settlement, the judge who acted as mediator will not hear the case unless the parties agree. If they do not agree, it will be necessary for the matter to be referred to another judge. However, if sittings are scheduled so that two judges are available for one week of every two months this should not occasion any delay.

93. Under the proposed new system, matters should ordinarily be determined by a judge sitting alone. However, the Panel considers it advisable to retain some elements of peer review, with assessors sitting with the judge in disciplinary cases and, if the judge so decides, in exceptional cases involving serious allegations. Accordingly, it is proposed that panels of assessors be established for each region and that they be appointed by the management and elected by the staff. The judge should also sit with medical assessors, appointed by the management and the staff member, in cases involving medical issues. Assessors will have the right to question witnesses if so permitted by the judge. They will provide the judge with advice, but the final decision will be made by the judge alone.

94. The Dispute Tribunal should give reasoned decisions in every case that proceeds to judgement. All judgements should be delivered in public, either orally or in writing, and should be published on the Intranet and the Internet in English and in French. If the matter was decided in another official language of the Organization, the judgement should also be published in that language. The judge should be able to suppress the names of parties or witnesses if that is considered to be in the interests of justice.

95. It is proposed that either side be able to appeal decisions of the Dispute Tribunal to UNAT. The appeal process should be much simpler than that currently involved in applications to UNAT. A notice of appeal stating the grounds of appeal and the relief claimed should be filed within 45 days of the decision in the registry at which the matter was heard. The other side should file an answer and/or a notice of cross-appeal within 30 days. If a notice of cross-appeal is filed, the appellant will need to file an answering document. Thereafter, the parties should each file written submissions at times fixed by the registrar, who will be responsible for preparing an appeal file, in conference with the parties or their legal representatives, to be transmitted electronically to UNAT.

96. The Redesign Panel is required by resolution 59/283 to consider the harmonization of the Statutes of UNAT and ILOAT. Under the Panel's proposals, UNAT will become primarily an appeal court rather than an administrative tribunal. Thus, complete harmonization is not possible. However, the Panel is of the view that there should be harmonization of jurisprudence, powers and status so as to ensure, so far as is practicable, equal treatment of the staff members of specialized agencies and those of the United Nations itself. To this end, rule changes have been proposed with respect to appointments and disciplinary proceedings. Further, the proposed jurisdiction of the Dispute Tribunal has been expressed in terms that reflect ILOAT jurisprudence. As UNAT will have power to make orders that should have been made by the Dispute Tribunal, there will be no limitation on its appellate powers.

97. Even if the Redesign Panel's proposals are implemented, UNAT will retain administrative jurisdiction in relation to the United Nations Joint Staff Pension Fund and other bodies that are subject to its jurisdiction.[33] To ensure consistency with its appellate powers, its independence and compliance with the rule of law, it is recommended that, after consultation with those subject to its jurisdiction, the definition of staff in article 2 of the UNAT Statute be expanded, that article 10 be

[33] The International Court of Justice, the International Tribunal for the Law of the Sea, the International Seabed Authority, the International Civil Aviation Authority, the International Maritime Organization and UNRWA.

amended to enable it to grant specific performance or other relief as it deems appropriate and that it otherwise be brought into line with the Statute of ILOAT.

98. To provide for the proposed new appellate jurisdiction of UNAT, changes to articles 2, 7 and 10 of its Statute are necessary. To enable consistency in decision-making, there should also be provision for the President or any two members of UNAT to refer important cases to the whole Tribunal.[34]

99. Just as important as the harmonization of UNAT and ILOAT jurisprudence is the harmonization of status and work practices. The work practices of UNAT could be made more efficient.[35] Judges of UNAT should be paid a proper honorarium that is not less than that paid to their ILOAT counterparts.[36]

VI. Legal representation

Panel of Counsel

100. The Panel of Counsel, which was formally established in 1984 and which has the responsibility to provide legal assistance and representation to United Nations staff members in proceedings within the internal justice system, is extremely underresourced and is not professionalized. Yet as the first port of call in the formal justice system for staff members, and as a body that also plays an active role in the informal system by advising staff members on whether and how to seek informal resolution of disputes, its responsibilities are onerous. As a result, the current structure of and resources available to the Panel are fundamentally inconsistent with the goal of an efficient and effective administration of justice in the United Nations. The Panel has functioned to the extent it has because of the dedication and hard work of its small staff and volunteers.

101. The Panel of Counsel received 266 new cases in 2005, 48.5 per cent of which came from offices away from Headquarters. The number of cases in the formal system increased by 45 per cent in 2005, and the number in the informal system decreased by 4 per cent. In the same period, there was a 50.24 per cent increase in the number of cases taken to JAB and an increase of 172 per cent in the number of cases litigated at UNAT.

102. As of February 2006, the Panel of Counsel had only two full-time staff members in New York and four part-time counsel. The only post available for it in the regular budget is one General Service post. The full-time post of the

[34] Suggested amendments to deal with these two matters are set out in annex II.

[35] The major difference between UNAT and the ILOAT is that ILOAT judges prepare draft judgements in the cases allocated to them at least one month before the sittings commence. The same practice is followed by the judges of the World Bank Administrative Tribunal. Thus, the sittings are much shorter than those of UNAT.

[36] Apart from travel and per diem allowance, UNAT judges receive only $1 per annum. ILOAT judges are paid a daily subsistence allowance during their stay in Geneva at the rate applicable to the D-2 level and are reimbursed their travel expenses in accordance with the ILO Financial Rules. Until recently, the fee for a judge was 1,500 Swiss francs for a judgement in respect of which he or she was rapporteur and 375 SwF for a judgement in respect of which he or she was not rapporteur. As from the May 2006 session, these amounts were doubled. Were UNAT judges paid at the same rate and their draft judgements prepared in advance of the sittings, there would be some cost savings in relation to their per diem allowance.

Coordinator, at the P-2 level, is not financed from the regular budget. In Geneva, there is no full-time coordinator of the Panel, and the Secretary of JAB/JDC serves as acting coordinator in addition to his other functions. In Vienna and in Addis Ababa, retired staff members serve as volunteer coordinators of the Panel, while in Santiago the Coordinator assumed the part-time position in addition to another full-time position. In Nairobi there is no formal coordinator, although there is a part-time coordinator and an informal list of volunteers.

103. In all cases, the coordinators work with volunteers with varying degrees of availability. Offices of the Panel of Counsel do not exist in peacekeeping missions or other field duty stations. The essentially voluntary nature of service in the Panel of Counsel and the pressure of their regular duties for the serving staff members frequently combine to militate against effective representation.

104. In a reflection of the perception that the internal justice system is not independent, staff members who do not have permanent appointments are sometimes reluctant to serve on the Panel of Counsel. Further, they often believe that services as counsel could pit them against a management that has to review their employment contract.

105. Moreover, there is no requirement for legal training or qualifications for service in the Panel of Counsel, and an overwhelming majority of individuals serving as counsel on the Panel lack legal qualifications. While these counsel are committed to their duties and perform to the best of their abilities, a "system of justice" in which something as important as the provision of legal advice and assistance to staff members of the United Nations is frequently undertaken by non-lawyers is unsatisfactory.

106. The Redesign Panel notes that legal assistance to the management of the Organization is undertaken not by volunteers without legal training, but by a cadre of professional lawyers in the Department of Management and the Office of Legal Affairs. This disparity in legal resources available to the management and staff members has created an egregious inequality of arms in the internal justice system.

Proposed Office of Counsel

107. A professional Office of Counsel should be established for the United Nations, staffed by persons with legal qualifications — at the minimum, qualifications recognized by the courts of any Member State. They should serve on a full-time basis and be properly resourced. Considering that the Office of Counsel will cover not just the Secretariat but also the funds and programmes, it is proposed that the latter contribute to the resources of the Office.

108. The establishment of the Office of Counsel will not preclude voluntary service in the Panel of Counsel by retired staff members of organizations in the United Nations system who are qualified lawyers, as a back-up to full-time counsel. Nor will it preclude the possibility of recourse to outside counsel either on a pro bono basis or paid for personally by staff members.

109. Although the Office of Counsel should be based at Headquarters in New York, it should have coordinators in Geneva, Vienna, Nairobi, the regional economic commissions and peacekeeping missions with significant numbers of civilian staff. The coordinators in these regional duty stations should serve full-time in this

function. The Redesign Panel recommends that the General Assembly establish a post of the Director of Office of Counsel in New York at the D-1 level, plus one P-5 post of Senior Staff Counsel, two P-2 posts of Associate Staff Counsel and three General Service posts. There should also be posts of one Coordinator at the P-3 level and one General Service staff member at each of the following duty stations: Geneva, Vienna, Nairobi, Addis Ababa/Johannesburg, Santiago/Panama City and Amman/Beirut.

110. Representatives of the Office of Counsel in peacekeeping missions should report to the Director of the Office at Headquarters, but the necessary posts should be established as part of the budget of the mission. Given the large numbers of field offices and staff in Africa, the two regional offices in Nairobi and Addis Ababa/Johannesburg are necessary in order to give that region effective coverage.

111. To avoid conflicts of interest and to ensure independence, the proposed Office of Counsel should be relocated from the Department of Management to the proposed Office for the Administration of Justice.[37]

Legal representation of the Organization

112. The Redesign Panel is required by its terms of reference to consider the role of the Administrative Law Unit. There can be no doubt that under the existing system there is a conflict of interest insofar as the Administrative Law Unit advises on whether a decision should be reviewed or modified and, if not, later defends the position taken in a subsequent appeal.

113. The Panel is of the view that the review process should be abolished. The Administrative Law Unit could concentrate on its function as legal adviser to management.

114. Legal advisers are already available at most duty stations. However, with the decentralization of the justice system and the consequential delegation of authority to the executive heads of offices away from Headquarters and missions, it may be necessary to provide additional legal advisers in duty stations away from New York. It will also be necessary to designate legal representatives for each of the regions covered by the proposed new system.

VII. Education and training

115. The efficacy of the proposed reforms to both the formal and the informal justice systems depends on the careful education and training of all judges, ombudsmen, legal representatives, registrars, mediators and court and office staff. Due consideration must be given in all training programmes to the unique nature of the United Nations.

116. The new role of mediation in the proposed system requires particular attention, since its novelty and unfamiliarity, as well as the duty of confidentiality it imposes, require targeted training to ensure its successful implementation. In the informal

[37] See section IX on independence and transparency.

(vii)(b) the Ombudsman, the coordinating mediator and the mediators should be provided with training on the new justice system.

117. Judges should be provided with training to familiarize them with the Organization and its funds and programmes, in particular their administrative structures. As they should also be empowered to mediate disputes, they should undergo high level training in judicial mediation.

118. All registrars and registry staff should receive the same United Nations familiarization programme as the judges and should also be trained in court administration. This involves the case management of court files, handling requests for information and dealing with litigants. The training should comprise both an educational programme and rotating internships with international or national court systems that have developed efficient systems of court administration. If necessary, follow-up training can be provided by an outside senior court administrator. Finally, the registrars should undergo mediation training similar to that given to the judges.

119. Management should be provided with a training programme designed to familiarize them with the new system of justice and to promote the identification, prevention and settlement of workplace conflict, including with regard to accountability and cross-cultural issues.

VIII. Accountability

120. An integrated and effective system of accountability requires that managers assume authority and responsibility for their decisions and, if necessary, answer for them within the context of the management structure and the justice system.

121. In order to achieve an effective change in management culture and to properly address the prevailing perception that the present system shields managers from accountability, the Redesign Panel proposes that they personally answer for their acts and decisions and that the formal justice system entertain applications for the enforcement of individual financial accountability. Moreover, United Nations Dispute Tribunal judges should refer appropriate cases to the Secretary-General for possible action to enforce accountability.

IX. Independence and transparency

122. The introduction of a formal system of justice in which professional judges will make binding decisions will necessarily change the role of the Secretary-General. If the persons who took the decisions or actions in question are directly responsible for the defence of their actions, the Secretary-General will no longer be directly involved in litigation. In recognition of this, it is proposed that proceedings should be brought against the Organization or the relevant fund or programme, and not, as is currently the case, against the Secretary-General or the executive head of the fund or programme.[9] This will conform to the legal reality and also to the practice in other international organizations.

[9] Proceedings in UNAT are brought against the Secretary-General in cases where they concern the funds and programmes.

123. Moreover, it will allow the Secretary-General to be, and to be seen as, the guardian of the integrity of the internal justice system and protector of the rule of law. In this capacity, the Secretary-General will be able to ensure that both managers and staff abide by the spirit of the Charter, the applicable rules and regulations and international human rights standards.

124. For a system of justice to have institutional independence, it is essential that it have operational and budgetary autonomy. To ensure that independence, it is proposed that an Office of Administration of Justice be established, headed by an executive director at the rank of Assistant Secretary-General and appointed by the Secretary-General after consultation with staff. The executive director should have extensive experience within the United Nations system and possess legal qualifications. The role of the executive director will include:

(a) Overall administrative coordination of the internal United Nations justice system;

(b) Overall supervision and coordination of registries and the Office of Counsel;

(c) Coordination of the monitoring and oversight of the system;

(d) Liaison with the Office of Internal Oversight Services and other bodies whose work has an impact on the justice system;

(e) Identification of rules, regulations and administrative instructions that need to be changed to ensure substantive justice;

(f) Preparation of an annual report on the formal justice system for transmission by the Secretary-General to the General Assembly;

(g) Overall responsibility for the management of financial and budgetary matters for the formal justice system and the Office of Counsel, including interface with the General Assembly;

(h) Representation of the United Nations in meetings with other international administrative tribunals and similar bodies, and on the question of administration of justice in general.

125. For the formal system of justice to be truly independent, it is essential that it be properly resourced by regular budget allocations for posts and travel. Initially, it will also be necessary to provide for establishment costs, including hearing conference rooms, videoconferencing, sound recording, communication systems and up-to-date computer hardware and software.

126. An important aspect of judicial independence is that the judges must have sole responsibility for the management of their judicial activities. In the proposed new system, they will be assisted by registrars who will be under the overall supervision of the executive director but who will be directly responsible to the judges in relation to judicial matters. However, the key prerequisite for judicial independence is that judges be free from external influence. Thus, appointment and removal procedures, such as those proposed in the present report, must be put in place to ensure their independence.

127. It is proposed that a five-member Internal Justice Council be established, consisting of a staff representative, a management representative and two

distinguished external jurists, one nominated by the staff and one by management, and chaired by another distinguished external jurist appointed by the Secretary-General after consultation with the other four members. The Internal Justice Council will be responsible for monitoring the formal justice system and also for compiling a list of not fewer than three persons eligible to be appointed to each judicial position.

128. The judges of UNAT should be appointed by the General Assembly from the list prepared by the Internal Justice Council and submitted by the Secretary-General. The judges of the United Nations Dispute Tribunal should be appointed by the Secretary-General from the list prepared by the Internal Justice Council. The Dispute Tribunal judges should elect their own President, as is the case for UNAT. No two members of either Tribunal should be nationals of the same State.

129. To be eligible for appointment as a judge, a person should:

(a) Be of high moral character;

(b) Have the qualifications and recognized competence necessary for appointment to high judicial office;

(c) Have at least 10 years relevant professional experience in the case of the judges of the Dispute Tribunal and at least 15 years in the case of UNAT judges.

130. Judges of the Dispute Tribunal and of UNAT should be appointed for a term of five years, renewable once only, and be removable only by the General Assembly, at the request of the Secretary-General, and only on grounds of proven misconduct or incapacity. Furthermore, a person appointed as a judge should not be eligible for appointment to any other post within the United Nations, except another judicial post.

131. The principal registrar, registrars and other registry staff (including judges' staff) should be appointed as staff of the United Nations. The principal registrar and registrars should be appointed only after consultation with the President of UNAT and the appropriate Dispute Tribunal judge.

X. Cost-effectiveness

132. The strengthened Office of the Ombudsman, with the Mediation Division, will require additional resources, but only a modest increase over the current budgets of the three existing Ombudsman Offices [36]. However, the strengthened Office will bring considerable efficiency benefits to the justice system as a whole. The proposed system is designed to allow the informal and formal systems to work together to resolve disputes at the earliest possible stage. Increasing resources devoted to the prevention and early resolution of disputes will result in significant downstream savings for, and ensure the more efficient functioning of, the formal justice system.

133. The current formal system of justice is very costly and needs to be replaced by a cost-efficient system. The fact that the various advisory bodies are composed of volunteer staff members generates the illusion that they involve little cost. The truth is the exact opposite.

[36] See para. 48 above and footnote 17; see also annex IV.

134. There are currently four posts in the UNAT secretariat and not fewer than 16 devoted to the secretariats of the various advisory bodies (including the JDC for UNDP). Further, large numbers of staff are engaged in the work of the latter bodies at times when they would otherwise be performing their official duties.

135. There are 69 JAB and 40 JDC members in New York, 45 JAB and 27 JDC members in Geneva, 20 JAB and 10 JDC members in Vienna, and 24 JAB and 33 JDC members in Nairobi. In total, there are more than 250 staff members participating in the JABs and JDCs, who deal with not more than 250 cases in a given year.[40]

136. It is impossible to calculate precisely the time dedicated by staff to JAB and JDC work. However, in New York, the time dedicated by staff to JAB activities in 2005 was the equivalent of approximately 50 working weeks, while for JDC it was the equivalent of approximately 84 working weeks. It is estimated that in Geneva, for 2004 and 2005, staff members dedicated 2.2 working days to each JAB case and two working weeks to each JDC case, resulting in the equivalent of approximately 73 working weeks.

137. In addition to the direct cost of JABs and JDCs, account must be taken of the time and effort of those representing both staff and management in what are complicated and lengthy processes. Further, there are significant hidden costs resulting from delays, including, from time to time, the award of damages by UNAT for precisely that reason. Moreover, the lengthy nature of proceedings, the lack of due process and the uncertainty of outcome generate a climate of restlessness and demoralization, which exacts a heavy cost, not only on individual staff members, but also on work relations in the units in which they perform their functions and, ultimately, on the Organization as a whole.

138. The proposed new system will evidently require significant resources. However, they will be considerably less than if an imaginative effort were made to make the present system perform better — an effort that would still not guarantee an effective or efficient system. By contrast, the proposed new system will save time, provide due process and ensure predictability. This will reduce the demotivation and demoralization of staff and result in a more efficient use of the Organization's resources.

139. Suggested posts for the proposed formal system, the Office of the Ombudsman and the Office of Counsel are set out in annexes III, IV and V.

XI. Consequential and transitional measures

140. The Panel sees no insuperable difficulty in establishing a new system of internal justice that is fully functional by 1 January 2008. To that end, immediate steps should be taken to appoint the executive director of the Office of Administration of Justice. The executive director must be provided with sufficient staff and resources from the very beginning to undertake the necessary start-up work.

[40] In 2003 and 2004, the number of cases disposed by all JABs was 208 and 227, respectively; for the JDCs, the numbers were 26 and 24, respectively.

141. The JDCs and JABs will continue to function until the new system is operational. Accordingly, it is desirable to establish the Office of Counsel as soon as possible.

142. To ensure that the new formal system is functioning by 1 January 2008, it is essential to establish the Internal Justice Council at an early date so that it can compile lists of candidates for the timely appointment of United Nations Dispute Tribunal judges and the filling of any vacancies that occur within UNAT. It will be necessary to prepare a draft statute creating the Dispute Tribunal and amendments to the Statute of UNAT to confer appellate jurisdiction.

143. Early action should be taken to establish registries and to equip them with the requisite facilities. Although the executive director will be able to undertake much of this work, it is essential that there be someone with extensive experience in court administration to assist in the establishment of the registries and the training of the registrars and other registry staff. Additionally, it will be necessary to prepare forms and interim rules for the Dispute Tribunal and amendments to UNAT rules to cover its new appellate jurisdiction.

144. Perhaps the most important step to be taken before the Dispute Tribunal becomes operational is the preparation of a handbook setting out details of the new system and explaining how proceedings can be commenced. The handbook should be available in all six official languages of the United Nations and should be provided to all staff. The same information should be made available on the Intranet.

145. Additionally, the Administration will have to make the necessary arrangements for the delegation of authority to the executive heads of all duty stations with respect to disciplinary action. It will also be necessary to make amendments to the Staff Rules and Regulations and administrative instructions with respect to the setting aside of appointments where there has been a flawed appointment process and for the new judicial procedures.

146. Timely steps should be taken to establish standing panels on disciplinary matters and to select assessors for disciplinary cases.

147. Because the new system depends on the informal and formal systems complementing each other, it is essential that the unification and strengthening of the Office of the Ombudsman in the field by the appointment of Ombudsmen in offices away from Headquarters and field operations and by the establishment of the Mediation Division be completed by the time the new formal system comes into operation.

148. Finally, it will be necessary to make provision for clear transitional procedures in the statute establishing the United Nations Dispute Tribunal. In this regard, the Panel considers that the JABs and JDCs should proceed with all current matters and all matters filed until 1 January 2008, but that matters not disposed of by that date should be transferred to the Dispute Tribunal to be determined in accordance with the pleadings as filed and such further pleadings as may be directed.

XII. Conclusions

149. In adopting resolution 59/283 and authorizing the establishment of the Redesign Panel with wide terms of reference, the General Assembly took a major step towards comprehensive reform of the United Nations, in particular ensuring that the Secretariat, as one of the principal organs of the Organization, is brought under the rule of law. There could be no issue of greater importance for the management of the Organization than that there should be an efficient, independent and effective system of internal justice.

150. Thus, the Redesign Panel, after wide consultations, concludes that the dysfunctional system of administration of justice that currently exists is outmoded and inconsistent with the principles and aspirations of the United Nations, and needs to be replaced.

151. The Redesign Panel has undertaken its assignment with every sense of responsibility, cognizant of the special nature of the United Nations. The Panel believes that investing in a professional, independent, efficient and well-resourced internal justice system is an indispensable step in the renewal of the Organization. The overall design of the proposed new system is depicted in an organization chart in annex VI.

XIII. Recommendations

152. The Redesign Panel recommends the establishment by the General Assembly of a completely new system of administration of justice in the United Nations. The new internal justice system should be a professional, independent and decentralized one, fully consistent with international human rights standards.

153. The Redesign Panel recommends the early establishment of an Office of Administration of Justice in the United Nations, headed by an executive director with the rank of Assistant Secretary-General.

154. In this context, the Panel recommends the establishment of a two-tiered system of formal justice, comprising a first-instance decentralized tribunal, the United Nations Dispute Tribunal, composed of professional judges with power to make binding decisions and with jurisdiction as set out in annex I. The Tribunal should replace existing advisory bodies, including the Joint Appeals Boards and the Joint Disciplinary Committees, but not including the rebuttal panels and Classification Appeals and Review Committees.

155. The United Nations Administrative Tribunal should be renamed the United Nations Appeals Tribunal and its Statute amended to include a new appellate jurisdiction as set out in annex II.

156. The scope and jurisdiction of the informal and formal internal justice system should include all persons employed by the United Nations in a remunerated post or performing personal services under contract with the Organization.

157. Consultations should be held with the United Nations Joint Staff Pension Fund and other bodies subject to the administrative jurisdiction of the Administrative Tribunal with a view to amending its Statute to regard the definition of staff, to enable it to grant the relief it considers appropriate and otherwise to bring it into

harmony with the Statute of the Administrative Tribunal of the International Labour Organization.

158. The process of administrative review before action in the formal justice system should be abolished.

159. Managers and staff members should be held personally accountable for their decisions and actions. Accordingly, the formal justice system should entertain applications for the enforcement of individual financial accountability, and Dispute Tribunal judges should have power to refer appropriate cases to the Secretary-General for possible action to enforce that accountability.

160. Staff associations should have an independent right to bring a class or representative action on behalf of their members.

161. Full delegation of authority should be granted to special representatives of the Secretary-General heading peacekeeping and political missions and to heads of offices away from Headquarters in misconduct and disciplinary cases.

162. A clear framework of cooperation and coordination between the Office of Internal Oversight Services and the United Nations internal justice system should be established on a priority basis.

163. Standing Boards of Inquiry should be established in all peacekeeping missions of the United Nations, with full-time members in large missions.

164. The Redesign Panel recommends a single integrated but decentralized Office of the Ombudsman for the United Nations Secretariat and the funds and programmes.

165. The Secretary-General should appoint the United Nations Ombudsman; the Ombudsman for funds and programmes will be appointed by the executive heads of those bodies. A selection committee, composed of a staff representative, a management representative and two distinguished outside Ombudsmen, one appointed by the staff and one by management, and chaired by a third distinguished Ombudsman appointed jointly by the Secretary-General and the executive heads of the funds and programmes, should submit a list of not fewer than three names for each position of Ombudsman, taking into consideration the nature and the characteristics of these institutions.

166. The Office of the Ombudsman should be strengthened by combining the functions of formal mediation with proactive monitoring of maladministration.

167. A Mediation Division should be established within the Office of the Ombudsman.

168. The Panels on Discrimination and Other Grievances should be abolished; their functions, as they relate to the informal system, should be transferred to the Office of the Ombudsman and their other functions to the formal system of justice.

169. The Staff Rules and Regulations should be amended to allow the Secretary-General to declare a post vacant where the appointment process has been flawed.

170. A professionalized Office of Counsel should be established and located in the proposed Office of the Administration of Justice.

171. The Department of Peacekeeping Operations should take the necessary steps to identify the peacekeeping missions of adequate size that would benefit most from the services of Ombudsmen and coordinators of the Office of Counsel and ensure the inclusion of such posts in the missions' budget proposals.

172. Proceedings in the formal justice system should be brought against the Organization or the relevant fund or programme, not the Secretary-General or the executive heads.

173. An Internal Justice Council should be established to compile lists of candidates for appointment as judges in the Organization's internal justice system, and to monitor that system.

174. Judges of the United Nations Administrative Tribunal should be appointed by the General Assembly from the list of candidates prepared by the Internal Justice Council. In the case of the judges of the United Nations Dispute Tribunal, they should be appointed by the Secretary-General from the list prepared by the Internal Justice Council.

175. The new internal justice system should be provided with post resources as set out in annexes III, IV and V.

176. Subject to the approval of a new system of internal justice by the General Assembly, it should become operational on 1 January 2008.

177. Education and training will be the cornerstone of the successful operation of the new internal justice system. Intensive training should be provided to all persons involved in the internal justice system. Staff members should be provided with a simply written handbook on the new system in all six official languages of the United Nations as a matter of priority.

Signed by the members of the Redesign Panel and submitted to the Secretary-General on 20 July 2006 for transmission to the General Assembly.

Mary **Gaudron** Louise **Otis**

Ahmed **El-Kosheri** Diego **Garcia-Sayan** Kingsley C. **Moghalu**

Annex I

Jurisdiction of the United Nations Dispute Tribunal

The Tribunal shall be competent to hear and to pass final and binding judgement in the following matters:

(a) Complaints by individual staff members against the Organization or its funds and programmes:

(i) Alleging non-compliance with the terms of their appointment or the conditions of their employment;

(ii) With respect to decisions adversely affecting their interests, provided that, in the case of disputed decisions with respect to classification or performance appraisal, a complaint shall not be receivable unless the Classification Appeals and Review Committee or the rebuttal panel, as the case may be, has completed its consideration of the case;

(iii) Alleging prejudicial or injurious conduct that does not conform to the Staff Rules and Regulations or administrative instructions, that involves a breach of the duty of care, the duty to act in good faith or the duty to respect the dignity of staff members, that infringes their rights, including the right to equality, or was engaged in for an improper purpose, including reprisal for seeking the assistance of the Ombudsman's Office or for bringing action before the Tribunal;

(iv) With respect to the imposition of disciplinary measures;

(b) Applications by a staff association against the Organization or its funds and programmes:

(i) To enforce the Staff Rules and Regulations or associated administrative instructions;

(ii) On behalf of a particular class of its members affected by a particular administrative decision;

(c) Applications by the Organization or its funds and programmes to enforce staff and financial rules relating to accountability against individual staff members.

Notes

It will be necessary to define "staff" widely. It could, for example, be defined as follows:

"Staff" includes former staff and persons making claims in the name of deceased staff members and means all persons who perform work by way of their own personal service for the Organization, no matter the type of contract by which they are engaged or the body or organ by whom they are appointed but not including military or police personnel in peacekeeping operations, volunteers, interns or persons performing work in conjunction with the supply of goods or services extending beyond their own personal service or pursuant to a contract entered into with a supplier, contractor or a consulting firm.

It may be necessary to make special provision for UNRWA staff.

Annex II

Amendments to the Statute of the United Nations Administrative Tribunal to cover its new appellate jurisdiction

Article 2

Amend the first sentence of article 2 to read:

"The Tribunal shall be competent to hear and pass judgement upon appeals from decisions and judgements of the United Nations Dispute Tribunal and upon applications not falling within the jurisdiction of the United Nations Dispute Tribunal alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members."

Article 7

Insert a new subarticle 1 reading:

"1. An appeal shall not be receivable unless a notice of appeal is filed within 45 days of the decision or order that is the subject of the proposed appeal."

Renumber the existing subarticles 1, 2 (a), (b) and (c), 3, and 4 as 2 (a); 2 (b) (i), (ii) and (iii); 2 (c); and 2 (d), respectively.

Renumber subarticles 5, 6, and 7 as 3, 4 and 5, respectively.

Amend renumbered subarticles 4 and 5 to read:

"4. The filing of an appeal or of an application shall not have the effect of suspending the execution of the judgement or decision contested.

"5. Appeals and applications may be filed in any of the six official languages of the United Nations."

Article 8

Amend the first sentence of article 8 to read:

"Where the President or any two members of the Tribunal sitting in any particular case consider that the case raises a significant question of law, he or they may, at any time before they render judgement, refer the case for consideration by the whole Tribunal."

Article 10

Insert a new subarticle 1 reading:

"1. If the Tribunal finds that an appeal from a decision or judgement of the United Nations Dispute Tribunal is well founded, it shall allow the appeal, either in whole or in part, and make such order or orders as should have been made at first instance. Otherwise, it shall dismiss the appeal."

Renumber the existing subarticles 1, 2, and 3 as subarticles 2 (a), (b) and (c), respectively.

Amend the first sentence of renumbered subarticles 2 (a) to read:

"If the Tribunal finds that an application not falling within the jurisdiction of the United Nations Dispute Tribunal is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked."

Amend the first sentence of renumbered subarticle 2 (b) to read:

"(b) Should the Tribunal find in relation to an application not falling within the jurisdiction of the United Nations Dispute Tribunal that the procedure prescribed in the Staff Regulations or Staff Rules has not been observed, it may, at the request of the Secretary-General and prior to the determination of the merits of the case, order the case remanded for institution or correction of the required procedure."

Annex III

Recommended posts: formal justice system

Level	*Total*	*Administration and support staff (Office of Director of Justice, New York)*	*Judiciary (United Nations Administrative Tribunal and United Nations Dispute Tribunal)*
ASG	1	1 Executive Director of the Office of the Administration of Justice (New York)	
Special			7 part-time UNAT judges, to be paid a proper honorarium
Special	5		1 New York UNDT Judge 1 Geneva UNDT Judge 1 Nairobi UNDT Judge } remunerated at the ASG level 2 half-time UNDT Judges in Santiago and Bangkok
D-1	1	1 Principal Registrar	
P-5	3	1 Principal Assistant to the ASG 1 New York Registrar 1 Geneva Registrar	
P-4	3	1 Nairobi Registrar 1 Santiago Registrar 1 Bangkok Registrar	
P-3	3	3 research staff for UNAT and for the Principal Registrar	
P-2/P-3	6		1 Assistant to New York UNDT judge (also to assist New York Registrar as needed) 1 Assistant to Geneva UNDT judge (also to assist Geneva Registrar as needed) 1 Assistant to Nairobi UNDT judge (also to assist Nairobi Registrar as needed) 2 Assistants to half-time UNDT judges (also to assist Santiago and Bangkok Registrars as needed)
G-5/G-7	7	1 for ASG 1 for Principal Registrar (to assist ASG, New York Registrar and UNAT judges as needed) 1 for New York Registrar 1 for Geneva Registrar 1 for Nairobi Registrar 1 for Santiago Registrar 1 for Bangkok Registrar	

Annex IV

Recommended posts: Office of the Ombudsman

Level	*Total*	*Administration and support staff*	*Ombudsmen and mediators*
ASG	1		1 United Nations Ombudsman (New York)
D-2	1		1 Ombudsman for Funds and Programmes (New York)
D-1	7	1 Principal Officer of the Office of the Ombudsman (New York)	1 Regional Ombudsman (Geneva) 1 Regional Ombudsman (Nairobi) 1 Regional Ombudsman (Bangkok) 1 Regional Ombudsman (Amman/Beirut) 1 Regional Ombudsman (Santiago/Panama) 1 Coordinating Mediator (Mediation Division, New York)
P-5	2		1 Deputy Regional Ombudsman (Addis Ababa/Johannesburg) 1 Deputy Regional Ombudsman (Vienna)
P-4	4	2 Legal Officers (New York)	2 Mediators (Mediation Division, New York)
P-2/P-3	6	1 Case Officer/Legal Officer (Geneva) 1 Case Officer/Legal Officer (Nairobi) 1 Case Officer/Legal Officer (Bangkok) 1 Case Officer/Legal Officer (Amman/Beirut) 1 Case Officer/Legal Officer (Santiago/Panama) 1 Legal Officer (Mediation Division, New York)	
G-5/G-7	9	1 (Geneva) 1 (Nairobi) 1 (Bangkok) 1 (Amman/Beirut) 1 (Santiago/Panama) 3 (New York) 1 (Mediation Division, New York)	
Consultants			On-call international mediators, paid case by case

Notes

The current system (regrouping three offices of the Ombudsman/Ombudsperson/Mediator) has the following posts: one ASG, seven D-1 (including the three Ombudsmen for Geneva, Vienna and Nairobi already budgeted for 2007), one P-5, two P-4, two P-3, six General Service and four consultant Ombudspersons who are paid up to $30,000 each.

The proposed new system will require 11 new posts — one D-2, one P-5, two P-4, four P-2/P-3, three G-5 — and will save up to $120,000 a year, since the four consultant Ombudspersons will no longer be required.

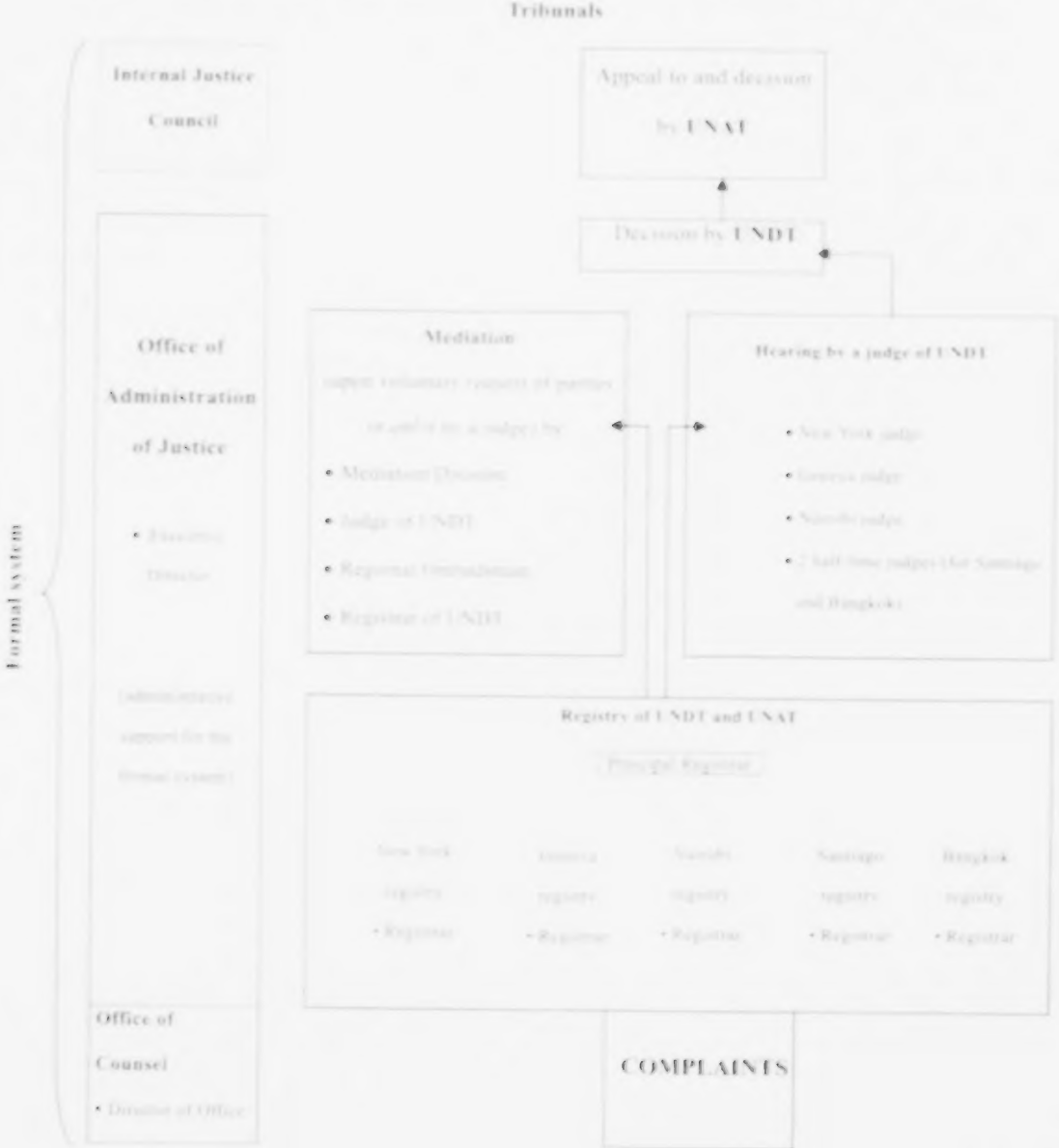
Annex V

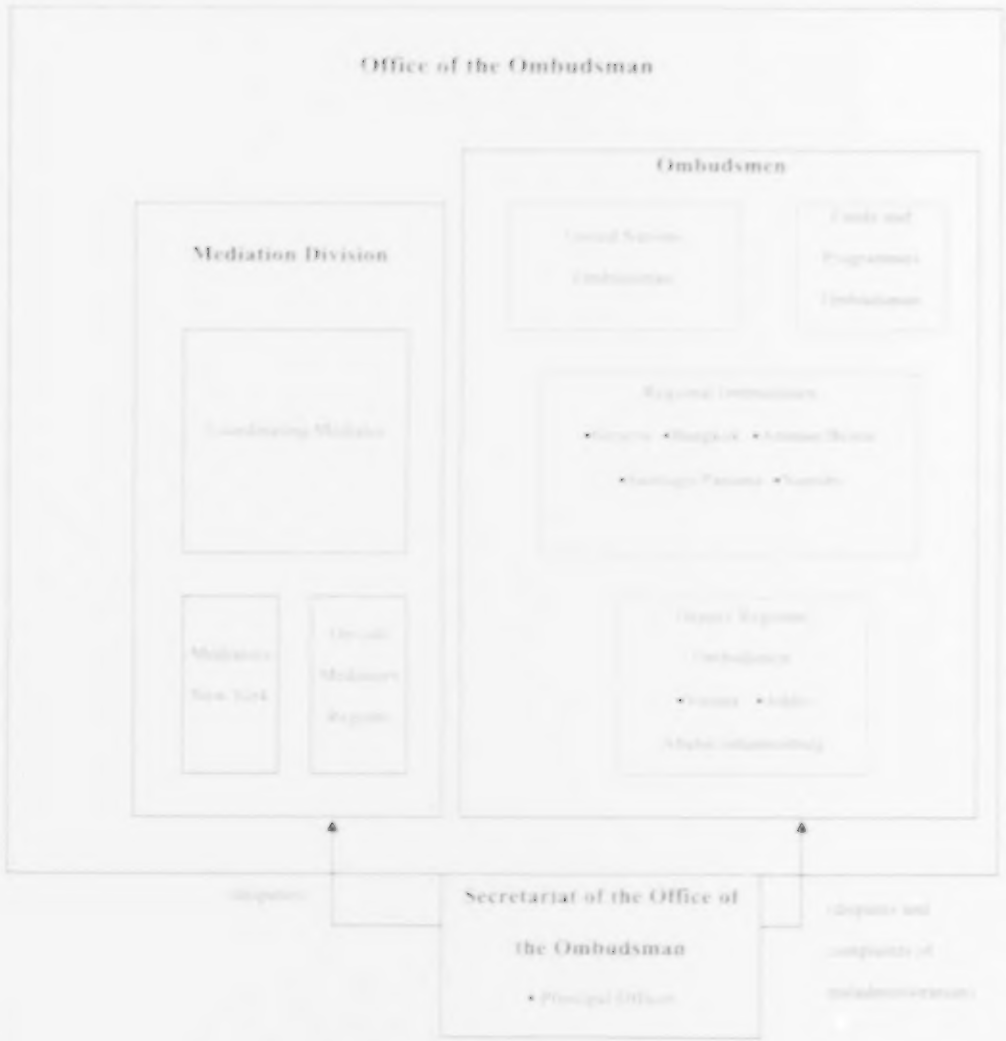
Recommended posts: Office of Counsel

Level	Number	Functional title	Location
D-1	1	Director of the Office of Counsel	(New York)
P-5	1		Senior Staff Counsel (New York)
P-4	6		Regional Coordinating Counsel (Geneva)
			Regional Coordinating Counsel (Vienna)
			Regional Coordinating Counsel (Nairobi)
			Regional Coordinating Counsel (Addis Ababa, Ethiopia)
			Associate Coordinating Counsel (Santiago, Panama)
			Regional Coordinating Counsel (Amman, Beirut)
P-2/P-3	2		Staff Counsel (New York)
G-5/6/7	4	Client Assist	
		Counsel	
		Counsel	
		Counsel	
		Admin. Officer (Human Rights)	
		Paralegal Assistant	
		Assistant Counsel	

Annex VI

Proposed system of United Nations internal justice




Office of the Ombudsman
Ombudsmen
Mediation Division
Informal system
Secretariat of the Office of the Ombudsman
• Principal Officer